

# FEDERAL MARITIME COMMISSION

MONARCH SHIPPING LINES, INC.,  
AMERICAN LINES LLC, MOZART  
FORWARDING, INC., AND PETER  
KAROUTA KENNEDY, POSSIBLE  
VIOLATIONS OF SECTIONS 8(a),  
10(b)(2) AND 19 OF THE SHIPPING ACT  
OF 1984 AS WELL AS THE  
COMMISSION'S REGULATIONS AT 46  
C.F.R. PARTS 515 AND 520.

Docket No. 03-06

Served: October 27, 2005

**Order Granting Motion to Reopen Record to Accept  
Addendum to Settlement and Agreement for Entry of  
Consent Order and Approving Settlement Order as  
Amended**

I. PROCEEDING

On June 17, 2003, the Commission issued an Order of Investigation to determine whether Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy (collectively "Respondents") had violated sections 8(a), 10(b)(2)(A), and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1707(a), 1709(b)(2)(A), and 1718, and/or the Commission's regulations at 46 C.F.R. Parts 515 and 520 by knowingly and willfully failing to publish a tariff, providing non-vessel-operating

common carrier (“NVOCC”) services without licenses and proof of financial responsibility, and willfully providing false information on an NVOCC license application. The Order of Investigation was subsequently amended on January 24, 2004, to determine whether the pending NVOCC license should be denied. Litigation was commenced and evidence was received in two days of hearings before an administrative law judge (“ALJ”).

On November 18, 2004, the Commission’s Bureau of Enforcement (“BOE”) entered into a Settlement and Agreement for Entry of Consent Order (“Settlement Agreement”). The Settlement Agreement was approved by the ALJ on November 22, 2004. Approval of Settlement; Consent Order, 30 S.R.R. 527 (ALJ 2004). On December 1, 2004, the Commission issued a Notice that it would review the ALJ’s approval of the Settlement Agreement.

On September 28, 2005, BOE, with Respondents’ consent, filed a Motion to Reopen Record to Accept Addendum to Settlement and Agreement for Entry of Consent Order (“Motion”). The questions of whether to grant the Motion and accept the Addendum to Settlement and Agreement for Entry of Consent Order (“Addendum”) as well as the approval of the Settlement Agreement are now before the Commission for determination. For the reasons discussed below, the Commission grants the Motion and approves the Settlement Agreement as amended.

## II. POSITION OF THE MOVANTS

BOE requests that the Commission reopen the record to amend the Settlement Agreement due to a recent change in facts. BOE explains that subsequent to release of a vessel owned by Respondent Kennedy on April 25, 2005, he approached BOE requesting an exemption from the Settlement Agreement’s prohibition against his operation as an ocean common carrier in the U.S.-foreign trades. Motion at 2. BOE and Respondents have agreed to revise the Settlement Agreement to exempt vessels owned by Mr. Kennedy from the prohibition on engaging in business

activities in any U.S. foreign trade for two years from the approval of the Settlement Agreement. Id.

### III. DISCUSSION

The Commission encourages settlements and generally favors their approval, unless they violate law or public policy, such as in cases of fraud, duress or mistake. See, e.g., Behring Int'l, Inc. – Independent Ocean Freight Forwarder License No. 910, 20 S.R.R. 1025, 1032 (I.D.), administratively final June 30, 1981; HUAL AS – Service Contracts and Time Volume Rate Arrangements with Ocean Freight Forwarders, 28 S.R.R. 481, 482 (I.D.), administratively final December 3, 1998; Old Ben Coal v. Sealand, Inc., 21 F.M.C. 506 (I.D.), administratively final November 29, 1978. Courts have approved this approach. Pennsylvania Gas and Water v. Federal Power Comm'n, 463 F.2d 1242, 1247 (D.C.Cir. 1972). The Commission also examines whether the settlement is generally fair, reasonable and adequate. Old Ben Coal, 21 F.M.C. at 513. These standards are discretionary. Id.

The requested Addendum stems from a change in relevant facts occurring after the submission of the Settlement Agreement to the ALJ (and subsequently to the Commission) for approval and prior to issuance of a final decision: when a vessel owned by Respondent Kennedy was released from arrest and became available for him to operate, he sought the revision which would allow him to do so immediately in common carriage in the U.S. trades. This changed circumstance is reflected by an order issued in the *in rem* action by a court in the Bahamas. As originally drafted, the Settlement Agreement would have prohibited such operation for two years. In view of the circumstances, we find it equitable to allow the parties to modify the Settlement Agreement, and that the modification meets the general standards of review. We therefore grant the Motion to amend the Settlement Agreement.

The Settlement Agreement, as modified by the Addendum, appears to present no adverse public policy or legal issues, and

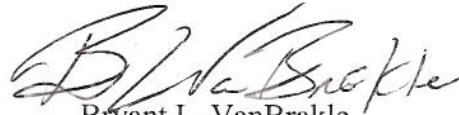
appears to be an equitable resolution of the matter. We see no evidence that the Settlement Agreement as modified was obtained by fraud, duress or mistake. We believe that the Settlement Agreement addresses the stipulated violations in a fair, adequate and reasonable manner. Further, approval of this revised Settlement Agreement comports with the Commission's general policy to encourage settlements.

THEREFORE, IT IS ORDERED, That the Motion to Reopen Record to Accept Addendum to Settlement and Agreement for Entry of Consent Order is granted;

IT IS FURTHER ORDERED, That the Settlement and Agreement for Entry of Consent Order is approved; and

IT IS FURTHER ORDERED, That this proceeding is discontinued.

By the Commission.

  
Bryant L. VanBrakle  
Secretary

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 03-06

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MONARCH SHIPPING LINES, INC., AMERICAN LINES LLC,  
MOZART FORWARDING INC., AND PETER KAROUTA KENNEDY

POSSIBLE VIOLATIONS OF SECTIONS 8(a),  
10(b)(2), AND 19 OF THE SHIPPING ACT OF 1984, AS  
WELL AS THE COMMISSION'S REGULATIONS AT  
46 C.F.R. PARTS 515 AND 520

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**ADDENDUM  
TO  
SETTLEMENT AND AGREEMENT  
FOR ENTRY OF CONSENT ORDER**

Whereas, the Federal Maritime Commission ("Commission") instituted a formal proceeding, Docket No. 03-06, to determine whether respondents Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy (collectively, "respondents") violated certain provisions of the Shipping Act of 1984 ("1984 Act") and the Commission's regulations, including, *inter alia*, sections 10(b)(2) and 19 of the Shipping Act;

Whereas, the Bureau of Enforcement ("BOE"), as a party to the proceeding, entered into a Settlement and Agreement for Entry of Consent Order ("Settlement Agreement") with the respondents dated November 18, 2004;

Article 2 of the Settlement Agreement is amended to read:


2. Respondents jointly agree and consent to the entry of an Order against respondents Monarch Shipping Lines, Inc., American Lines LLC and Peter Karouta Kennedy directing each of them to cease and desist from holding out to operate an ocean common carrier service in the United States foreign trades for a period of two (2) years from the date of approval of this Settlement, *provided, however*, such Order shall not apply to any vessel or vessels owned by Peter Karouta Kennedy or a company in which he has a majority interest.

Article 5 of the Settlement Agreement is amended to read:


5. For a period of two (2) years from the date of approval of this Agreement by the Commission, Respondent Peter Karouta Kennedy agrees that, with the exception of any vessel owned by Mr. Kennedy or by a company in which he has a majority interest, he will not (a) engage, directly or indirectly, in any business activities as a regulated entity (other than as an OTI), except as a bona fide employee of such entity, or (b) serve as an officer or director of such an entity.

FOR THE RESPONDENTS

Peter Karouta Kennedy, in his individual capacity

  
\_\_\_\_\_  
Date: 9/21/05


American Lines, LLC

By:   
\_\_\_\_\_  
Date: 9/21/05

Monarch Shipping Lines, Inc.

By:   
Date: 9/21/05

Mozart Forwarding, Inc.

By:   
Date: 9/21/05

FOR THE BUREAU OF ENFORCEMENT

  
Vern W. Hill, Director

Date: 28 September 2005

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Commercial Division

910 J  
SUPREME COURT  
Registry  
APR 23 2005  
33048  
NASSAU, BAHAMAS

2004  
COM/ADM/No.00022

**Admiralty Action in rem against The Vessel "MAYA EXPRESS"**

BETWEEN

**KENNEDY FUNDING, INC.**

Plaintiff

**AND**

**SKYLIGHT MARITIME LIMITED  
(The owners of The Vessel "MAYA EXPRESS")**

Defendant

**ORDER**

Before His Lordship Mr. Justice John Lyons  
Dated the \_\_\_ day of April, A.D., 2005

**UPON APPLICATION** by the Plaintiff by Summons filed herein on the \_\_\_ day of  
April, A.D., 2005

**AND UPON HEARING** Oscar N. Johnson, Jr. Esq. and Tara A. Archer of  
Counsel for the Plaintiff and Charles W. Mackay, Esq. Of Counsel for the Intervener,  
Blue Ocean Lines Dominicana, S.A. Ltd.

**AND BY CONSENT**

*J. Lyons*  
*cu:*  
*25.4.05*  
*[Signature]*



**IT IS ORDERED THAT** the Order of Honorable Justice John Lyons dated April 25, A.D. 2005, be and the same is hereby amended, *nunc pro tunc*, 25 April, A.D., 2005 as follows:

1. All references to the vessel MAYA EXPRESS in the said Order and the action herein are hereby amended to refer to the R/R DAYANA, ex MAYA EXPRESS.
2. The Intervenor BLUE OCEAN LINES DONINICANA, S.A. is the current registered owner of the vessel, entitled to the sole custody and control of the vessel upon her release from seizure on 25 April, A.D., 2005, as and when released by the Admiralty Marshal pursuant to the said Order dated 25 April, A.D., 2005.

**IT IS FURTHER ORDERED THAT**, as so amended, the order of this court dated 25 April, 2005, remain in full force and effect.

BY ORDER OF THE COURT

REGISTRAR

IN THE SUPREME COURT  
OF THE COMMONWEALTH OF THE  
BAHAMAS. Certified to be a true  
copy of the original document.

Dated the 9<sup>th</sup> day of June 19, 2005  
  
Registrar